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DATE FILED: <u>4/30/13</u>

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,

Plaintiff,

— v. —

MITCHELL COHEN, *et al.*,

Defendants.

X

:

: 10 Civ. 9280 (LGS)

:

: **CONSENT JUDGMENT**

:

: *#13,0859*

:

X

On April 25, 2013, this Court entered a Consent Order (the “Cohen Consent Order”), which resolved the claims asserted by plaintiff the United States of America (“United States”) against defendant Mitchell Cohen.

Pursuant to the Cohen Consent Order entered, Cohen consented, *inter alia*, to the entry of a judgment in the amount of \$2.7 million against him and in favor of the United States in six installments. *See* Cohen Consent Order, ¶ 2.

Accordingly, it is **ORDERED, ADJUDGED AND DECREED**: That, pursuant to Paragraph 2 of the Consent Order, judgment is hereby entered for the United States in the amount of \$2,700,000.00, as against Cohen.

**Dated:** New York, New York  
April, 30, 2013

**RUBY J. KRAJICK**

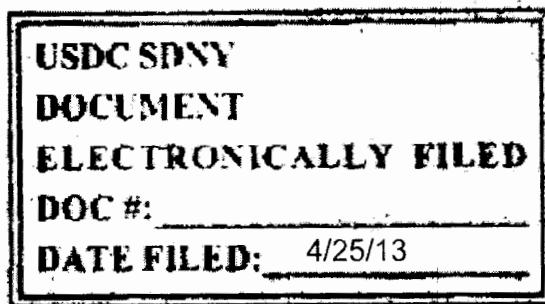
\_\_\_\_\_  
**Clerk of Court**

BY: \_\_\_\_\_

  
**Deputy Clerk**

**THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON \_\_\_\_\_**

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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

----- X	
UNITED STATES OF AMERICA,	:
Plaintiff,	:
— v. —	:
MITCHELL COHEN, <i>et al.</i> ,	:
Defendants.	:
----- X	

WHEREAS, in December 2010, the United States of America ("Government" or "United States") commenced this action by filing a complaint in this Court (the "Complaint") against, *inter alia*, Mitchell Cohen and several business entities that, during the times relevant to the allegations against Cohen in the Complaint, Cohen owned, controlled, or was affiliated with;

WHEREAS, the Complaint alleges that Cohen orchestrated a conspiracy to commit wire, mail, and bank fraud and to defraud the U.S. Department of Housing and Urban Development ("HUD");

WHEREAS, more specifically, the Complaint alleges that, in furtherance of that conspiracy, Cohen knowingly caused false documents and certifications to be submitted to HUD for the purpose of originating 17 residential mortgages that did not comply with HUD requirements and certifying those mortgages for FHA insurance;

WHEREAS, the Complaint sought treble damages, civil penalties, and injunctive relief against Cohen pursuant to the False Claims Act, 31 U.S.C. §§ 3729-33, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1833a (“FIRREA”), and the Fraud Injunction Statute, 18 U.S.C. § 1945;

WHEREAS, on December 14, 2010, the Government sought and obtained, by order to show cause, a temporary restraining order against Cohen and others;

WHEREAS, on December 29, 2010, Cohen consented to entry of a preliminary injunction (the “Injunction”), which remains in effect, enjoining him from, among other things, participating in any real estate transaction that involves any request or application for mortgage insurance from HUD and from advertising, marketing to the public, or otherwise soliciting business involving the origination of any federally-insured home mortgage loans;

WHEREAS, on April 24, 2012, Cohen was indicted in this District, and charged in a four-count indictment with, *inter alia*, conspiracy to commit wire, mail, and bank fraud and perjury;

WHEREAS, on December 27, 2012, and, as supplemented on January 18, 2013, Cohen pled guilty to two counts in the indictment against him – (i) conspiracy to commit wire, mail, and bank fraud; and (ii) perjury;

WHEREAS, to date, HUD has paid approximately \$1.89 million in total claims for 11 of the 17 HUD-insured mortgage loans specifically referenced in the Complaint, and the remaining six mortgage loans remain in default and foreclosure;

WHEREAS, the Government has obtained four prior settlements in this action, pursuant to which the defendants that entered into those settlements have agreed to pay the Government \$1.55 million in total in damages and penalties;

WHEREAS, as a consequence of his guilty plea, Cohen will be required to pay

restitution to compensate the United States for the losses HUD incurred as a result of his fraud;

WHEREAS, the Government and Cohen desire to reach a full and final settlement and compromise of the claims that the Government asserts against Cohen in this action;

NOW, THEREFORE, it is hereby ORDERED as follows:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.
2. A consent judgment (the “Judgment), in the form of Exhibit A to this Consent Order, shall be entered against Cohen and in favor of the Government in the amount of \$2.7 million, consisting of \$2.2 million in damages and a penalty in the amount of \$500,000.
3. With respect to the mortgage fraud conspiracy alleged in the Complaint, Cohen admits, acknowledges, and accepts responsibility for the following facts:
  - a. From in or about April 2007 to November 2010, Cohen agreed and conspired with others, including representatives of certain mortgage lenders, to secure HUD-insured mortgage loans through fraud;
  - b. In furtherance of the conspiracy, Cohen, through entities he owned or controlled, provided funds to pay off personal debts for eleven or more sets of home-buyers, so as to make those home-buyers appear more creditworthy than they actually were;
  - c. In furtherance of the conspiracy, Cohen had gift affidavits created to falsely assert that the home-buyers’ debts had been paid off using funds provided by relatives of the home-buyers, when Cohen in fact had supplied the funds; and
  - d. In 2011, and in opposition to the Government’s motion to hold him in contempt for violating the Injunction, Cohen submitted a declaration to this Court that contained material statements that Cohen knew to be false.
4. Cohen is hereby permanently enjoined from using the mails or wire transmissions,

or causing use of the mails or wire transmissions, fraudulently to obtain mortgage insurance from HUD or otherwise to transact fraudulent real estate sales.

5. Cohen is hereby permanently enjoined from participating in, whether directly, through any agent, servant, employee, or attorney, or by acting in concert with any other person or entity, (i) any real estate transaction that involves any request or application for mortgage insurance from HUD; and/or (ii) advertising, marketing to the public, or otherwise soliciting business that involves the origination of any federally-insured home mortgage loan.

6. Upon entry of this Consent Order, Cohen agrees to a permanent abstention from all HUD programs, consistent with 2 C.F.R. § 2424.1100. This abstention shall preclude Cohen, as of the date of entry of this Consent Order, from engaging in any further business of any kind regarding any program offered or administered by HUD.

7. Subject to the exceptions in Paragraph 9, in consideration of the obligations set forth in this Consent Order, and conditioned upon Cohen's full compliance with Paragraphs 4-6, the United States, on behalf of itself and its agencies, departments, officers, employees, servants and agent, agrees to release Cohen from any civil or administrative monetary claim that the United States has, or may have, under FIRREA, the False Claims Act, or the Fraud Injunction Statute arising out of the allegations asserted in the Complaint.

8. This Consent Order is intended to be for the benefit of the United States and Cohen only; by this instrument the parties to this Consent Order do not release any claims against any other person or entity.

9. Notwithstanding any term of this Consent Order, including the release provided in Paragraph 7 above, any and all of the following are specifically reserved and excluded from the scope and terms of this Consent Order as to any entity or person:

- a. any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Consent Order, any administrative liability, including suspension or exclusion from participating in transactions with the United States;
- d. any liability to the United States (or its agencies) for any conduct other than that alleged in the Complaint;
- e. any claims based upon such obligations as are created by this Consent Order; and
- f. any liability to the United States of any entity or person that or who is not released by the terms of this Consent Order.

10. In the event of a criminal prosecution or administrative action relating to the allegations asserted in the Complaint, Cohen waives and will not assert any defenses he may have based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Consent Order bars a remedy sought in such criminal prosecution or administrative action.

11. Nothing in this Consent Order constitutes an agreement by the United States concerning the characterization of the Judgment for purposes of the Internal Revenue Code, Title 26 of the United States Code.

12. The Court will retain jurisdiction over the enforcement and interpretation of this Consent Order and to resolve all disputes arising hereunder.

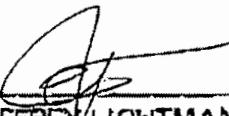
13. The United States and Cohen shall bear their own costs and attorneys' fees in this action.

14. The undersigned signatories represent that they are fully authorized to enter into this Consent Order and to execute and legally bind the parties they represent to the terms of this Consent Order.

15. The Complaint is hereby dismissed as to Cohen.

16. This Consent Order contains the entire agreement between the United States and Cohen with respect to the subject matter of the Complaint. No prior agreements, oral representations or statements shall be considered part of this Consent Order.

For Mitchell Cohen:

By: 

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MITCHELL COHEN

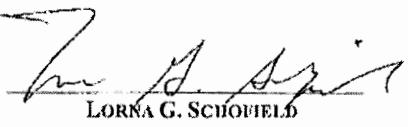
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SO ORDERED ON THIS 25 DAY OF April, 2013:

  
LORNA G. SCHIOPFIELD

UNITED STATES DISTRICT JUDGE

## Exhibit A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 10 Civ. 9280 (LGS)  
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**Dated:** New York, New York  
\_\_\_\_\_, \_\_\_, 2013

**RUBY J. KRAJICK**

**Clerk of Court**

**BY:** \_\_\_\_\_  
**Deputy Clerk**